OCTOBER MEETING, 1902.

THE stated meeting was held on Thursday, the 9th instant, at three o'clock, P. M.; the President in the chair. The record of the June meeting and the list of donors to the Library in the last four months were read, the Librarian calling particular attention to two quarto volumes of memoirs of eminent judges and lawyers of New England, with portraits, which had been given by their editor, Judge Leonard A. Jones, of the Land Registration Court.

Mr. Grenville H. Norcross, of Boston, and Mr. Edward H. Gilbert, of Ware, were elected Resident Members; and Mr. Reuben G. Thwaites, of Madison, Wisconsin, and Mr. John C. Schwab, of New Haven, Connecticut, were elected Corresponding Members.

It was unanimously voted to transfer the name of Henry C. Lea, of Philadelphia, from the list of Corresponding Members to that of Honorary Members, in recognition of his great eminence as an historical scholar and an historian.

A new volume of Collections — the Third Part of the Trumbull Papers — was on the table for delivery to members who had not already received it; and it was stated that another volume, containing selections from the Trumbull Papers from the beginning of 1780 down to the Treaty of Peace of 1783, would be ready before the close of the year.

The PRESIDENT read the following paper: —

On the 12th of June, at the time of the last meeting of the Society, our roll of Resident Membership numbered ninety-seven names. It now numbers ninety-five. General Charles Greely Loring and the Hon. Horace Gray have both died during the intervening time. Elected at the January meeting of 1887, General Loring, at the time of his death, stood, as respects seniority, forty-first on the roll. Mr. Justice Gray was among the four senior members of the Society, having been elected at the April meeting of 1861, — the meeting held

two days before the fall of Fort Sumter, and that at which the death of Chief Justice Shaw was announced. It so chanced, therefore, that, in the immediate presence of great impending events, Horace Gray, yet to be the Chief Justice of the Commonwealth, was here chosen to the place made vacant by the death of Lemuel Shaw, who had been its Chief Justice. As a membership of thirty years' duration terminated, another destined to last one and forty years began.

Though neither General Loring, nor Judge Gray more recently, could be numbered among our active members, each most properly found a place in this Society. Both eminent among the citizens of Boston and the Commonwealth, they led, each in his way, an active and useful life. Each, also, left a permanent mark behind him.

In announcing the death of General Loring, I shall confine myself strictly to what is customary in such cases, mentioning merely the facts of his connection with the Society. Mr. Lothrop, in all respects better qualified so to do, will offer an appreciation of the man and of what he did. Though, at the time of his death, the name of Charles Greely Loring had been for fifteen years upon our roll, he was never, as I have said, a constant attendant at our meetings, or contributor to our Proceedings. Elected as the representative of a sister organization, — the Museum of Fine Arts, — he represented it here; and, in fact, the one occasion on which his services were availed of by us was in connection with a matter of art, — the genuineness of the so-called Sharpless portraits of Washington. He then concurred in judgment with the Committee to which that subject was referred, pronouncing the portraits untrustworthy. An occasional attendant here, he was a listener only.

It was, during the earlier period of his membership, otherwise in the case of Mr. Justice Gray. Prior to his elevation to the bench, in 1864, his name appears repeatedly in the volumes of our Proceedings. In April, 1863, he was elected a member of the Standing Committee, and re-elected in 1864 and in 1865; and in March, 1866, he was one of the committee to nominate the officers of the Society for the ensuing year. In 1865 he served upon a special committee appointed to communicate to the Governor a resolution expressive of the desire of the Society for the publication of the statutes of Massachusetts from 1691

to 1780; and previously, in January, 1864, he called attention to a very singular mistake made by the Hon. James Savage in the 1814 edition of "Ancient Charters and Laws." Subsequently he more than once, in my intercourse with him, referred to this incident with considerable humor, describing how Mr. Savage sat, an attentive listener, while he pointed out that, whereas in the volume in question, of which Mr. Savage had been the editor, it was stated that there were one hundred and ten records in existence of a certain nature, the original manuscript read that there were no records, — the letter "n" in the original having been written, after the fashion of the day, so as closely to resemble two units, the innocent "no" in this manner being transformed into a mysterious and inexplicable "110," and then spelled out in full. In 1874 he brought to a special meeting of our Society the original notebook of Chief Justice Cushing, and read the minutes of the case of the Commonwealth *v.* Nathaniel Jennison before the Supreme Court of Massachusetts, at its April term, 1783, — the case which established the principle that slavery was abolished by the Declaration of Rights in our Constitution of 1780. The mooted question of the authorship of this clause in the Constitution was discussed by him and by Charles Deane at this and at subsequent meetings.[1]

Passing now to the more general subject, in the absence of Chief Justice Holmes, his successor both here and at Washington, and of our associate, Senator Hoar, — Gray's contemporary both at Harvard and in subsequent life, — no member of the Society, it has seemed to me, is better qualified by long, and perhaps I might say familiar, acquaintance, to speak appreciatively of Horace Gray than myself. I have known him for close upon fifty years, — since 1856, the date of my graduation. I was then a man of twenty-one; he, not yet thirty. I, a student of law; he, a member of the bar, and official reporter of the decisions of the Massachusetts Supreme Court. There was a bond of sympathy between us, for those were earnest days politically, and we were both filled with high expectation as members of the young Republican party, then just formed. Looking back upon it now, it was an impressive period, and, in facing it, it was my good fortune to

[1] Proceedings, First Series, vol. xiii. pp. 292–297. See also Proceedings, Second Series, vol. vii. pp. 77, 78.

be thrown among very interesting men. I read law under the auspices of the late Richard H. Dana. Closely associated in my mind with him are Francis E. Parker, Horace Gray, John Lowell, afterwards a judge of the Circuit Court, and Thornton K. Lothrop, the only survivor. All subsequently became members of this Society; and they constituted a very noticeable group. To me there was something at that time very attractive and sympathetic about Horace Gray. A certain brusqueness of manner and roughness of occasional speech which caused him then and later to be criticised by many, were not apparent to me. Very tall, but not yet heavy in frame, active of limb and quick in mind, — both mentally and physically alert,— there was a frankness, geniality and friendliness of manner about him, an apparent outspoken enjoyment of life and companionship, which appealed strongly. He had then already found his place, and the finding it made mere existence a pleasure to him. In the earlier years I had not known him. Entering college when only thirteen, he had graduated at sixteen, and at that time the bent of his activities was not pronounced. In the very last talk I had with him, on the gallery of his house overlooking the sea about Nahant, a few weeks only before his death, referring to that unformed period, he told me that, in all human probability, had Professor Agassiz come to this country two years earlier than he did, he (Gray) would have been a scientific man. At college his inclination had been to natural history; for, outgrowing his strength while a boy, — at the age of twelve he had attained the full height which always afterwards made him noticeable, — he was threatened with pulmonary troubles, and an open-air life, with gun and rod, was prescribed for him. So, for a time, he devoted himself to the study of birds and butterflies, while, almost to the close of his life, he was an eager angler. But, shortly after graduation, a change, most fortunate for him, was brought about through the business failure of his father, of the same name as himself. The senior Horace Gray was, like his son, a man of pronounced characteristics and exceptional ability; but he had the misfortune to be somewhat in advance of his time. Engaged in the development of the then infant iron industries of the country, he, before 1850, projected much which has been successfully carried out only within our own time; and so he shared the fate of many men of force and

foresight, who have the mishap of being born too soon, — before conditions are ripe for them. The father's bankruptcy changed the whole aspect of the son's future. He had to choose a profession as a means of support, and he turned to the law. In doing so, he did but follow what was for him the line of least resistance, instinctively or by chance recognizing his own aptitudes. By heredity, he was a lawyer; for, though, so far as I am aware, the Grays had been associated with business and shipping rather than with the law, Horace Gray, Jr.'s, mother was an Upham, and his paternal grandmother a Chipman, the former a name well known at the earlier Massachusetts bar, the latter conspicuous in the judicial annals of the Provinces. Admitted to the bar in 1851, three years later Gray had already so far attracted attention by his zeal and aptitude that he was appointed reporter of the court over which Chief Justice Shaw then presided. It was exactly the position for which he was adapted. He filled and magnified it. Delighting in his work, making himself most useful, and so acceptable, to those composing the court, he found himself in his element. It was then my acquaintance with him began. Subsequently I got to know him well, seeing much of him in an almost familiar way, — even to the end he called me always by my first name; but at length came the year 1861, — the deluge, — when I closed my office forever, finding my way into the army, and bidding farewell, as it proved, to an uncongenial calling. I well remember the time when, during that awful advance upon Richmond, in 1864, I heard Gray had been appointed a justice of the Supreme Court of Massachusetts. I sent my congratulations by letter to him from the headquarters of the Army of the Potomac, to which I was then attached; but I did not hear from him in reply. He was, as I subsequently found, the poorest of correspondents.

Of Horace Gray as a jurist, and occupant of the bench through nearly forty years, enough has been, and will be, said elsewhere. His death is yet to be announced, with due form, both before the Supreme Court of the United States, of which he died an associate justice, and before that of Massachusetts, of which, for nine years, he was Chief. I do not, therefore, propose to speak of him in that connection here. We knew him, not as a magistrate, but as an investigator of historical topics

from a legal point of view; and, as such, his work was very considerable. Nor was it lacking in quality. With a mind essentially legal, he had a natural turn for historical research. Of this he gave evidence, in a way somewhat exceptional, when, as reporter of the Supreme Court, he, in 1857, appended to the decision of Chief Justice Shaw, in the case of the Commonwealth *v.* City of Roxbury (9 Gray, 451) a most elaborate note, covering no less than twenty-five closely printed pages. In this note, amounting in itself to a treatise, and, of course, appended to the opinion with the concurrence and approval of the Chief Justice, the reporter of the court went into the entire history and learning of riparian rights and littoral ownership, evincing a familiarity with the early phases of municipal development in New England to which I have myself had occasion to refer in at least one paper printed in the Proceedings of this Society.[1] Again, at about the same time, he, working in co-operation with John Lowell, then the editor of the "Law Reporter," prepared a most elaborate review and criticism of the famous Dred Scott decision, — the decision which, I think it not unsafe to say, excited at the time more popular interest, and was more widely discussed, than any other ever rendered by a judicial tribunal. Indeed, in possible far-reaching consequences, the epoch-marking litigation of two hundred and twenty years before, known as The King *v.* John Hampden, can alone be compared with it; and, in 1637, the modern machinery of public discussion had not yet assumed shape. I have recently read again the analysis of Gray and Lowell of the points decided in the memorable litigation of 1854 to 1857, and of the opinions of the several justices.[2] It must be close upon forty-five years since I had last looked at it, and yet I found I remembered it well. At the time it appeared, the paper struck me as a very able discussion — at once learned and acute — of large and intricate questions; it has left the same impression on me now: and this, I submit, is not often the case with half-century reviews. Much as he afterwards wrote, I gravely question whether Gray ever did anything better than that "Law Reporter" article of 1857, prepared when he was not yet thirty. His discussion

[1] Genesis of the Massachusetts Town, Proceedings, Second Series, vol. vii. p. 202.

[2] Monthly Law Reporter (June, 1857), New Series, vol. x. pp. 61–118.

of the several opinions filed in that remarkable case will compare more than favorably with the best of those opinions. The paper indicated knowledge and power of a high order, and well matured. It was the work of no prentice hand.

But, in looking over this effort now, I have been struck with the tendency evinced throughout to the historical method. Every issue presented is at once, and instinctively, viewed from the historical standpoint. For instance, — discussing the right of a man of African blood to citizenship of the United States, and referring to the famous contentions of Chief Justice Taney, he begins as follows, — "Let us test the soundness of these several positions. After the Declaration of Independence, and before the adoption of the Constitution of the United States" etc., going back at once to original sources. Again, a few pages further on, referring to some point made by the Chief Justice, he says, "In order to understand this question, it will be necessary to give a brief historical sketch of the manner in which the United States have acquired and held those extensive domains which have always been known as the Territories of the United States." He then launches into an exhaustive discussion. Just before this paper was published, I personally had occasion to notice the alertness with which Gray seized at once any historical proposition which presented itself. I chanced one day casually to mention to him the fact that my father had noticed, in the course of other investigations, that, of the three seamen taken from the frigate "Chesapeake" by the British ship-of-war "Leopard," in 1807, two were negroes; but they were referred to in official documents and diplomatic correspondence as "citizens of the United States." His article was already in type, but Gray seized upon the point with avidity, and, at once hunting up the volumes of documents, the incident appeared in an appendix to the pamphlet edition of the review published two months later.

Forty-three years afterwards, it was my fortune again to call his attention to another historical incident, — a mere curiosity of literature, though very germane to a case which chanced then to be engaging his attention; but his opinion was already filed, and in print. The case was that of the Habana (175 U. S. 677), involving the issue whether fishing-boats engaged in their calling were subject to belligerent capture, and forfeiture as prize of war. I recalled to his memory a conversa-

tion between Rufus Choate and Richard H. Dana, which took place in the sick-room of the former in 1854, in the course of which Choate gave some reminiscences of the war of 1812, among others describing how, as a boy, looking seaward from the Essex hills, he had watched the frigate "Shannon" cruising before Ipswich, — "lounging about the bay of a warm summer afternoon, and standing off to sea at night, proudly scorning the fleet of fishing-boats about her." [1] Gray eagerly looked up the reference, and expressed his extreme vexation that his attention had been called to it too late for use in his opinion. It was that kind of historical, not strictly legal, precedent for which he had a natural liking.

In the long record of opinions embedded by Gray in the Reports both of the Supreme Court of Massachusetts and that of the United States, many could be referred to containing together a vast amount of genuine historical matter, distinct from legal lore. The case of Jackson *v.* Phillips, in the 14th of Allen, is an example in point. He there went exhaustively into the law of charities, tracing it back to its sources in the reign of Elizabeth, and pouring out a vast amount of historical knowledge, the fruit of elaborate research. In that case it may not unfairly be said he rescued a whole branch of the law from the chaotic condition in which it had previously been, and established it on the basis upon which it now firmly rests. Again, in the case of Briggs *v.* Light Boats he discussed, largely on historical grounds, the liability of the United States to be sued; a matter which he afterwards took up again, and upon which he read a most elaborate dissenting opinion in The United States *v.* Lee. Many other instances might be referred to, in which he enriched our books with the fruits of this same tendency to historical research. I will, however, only call attention to the notes relating to "Slavery in Massachusetts" which he incorporated in the purely historical volume known as Quincy's Reports; and the elaborate Appendix to that volume, covering nearly 150 pages, in which he exhausted the learning on the famous James Otis writs of assistance case. Prepared before he had yet been elevated to the bench, this performance was purely a labor of love, — a payment by him, in account, on that debt which every man owes to his profession.

[1] Richard Henry Dana: A Biography, vol. i. p. 259.

I have spoken of the series of our reports of adjudicated cases, and Mr. Justice Gray's contributions to them. Few persons, I think, whose attention has not been called directly to the subject, have any idea of the amount of printed matter which emanates from a justice of one of our courts of last appeal in the course of a prolonged service on the bench; more especially when the mind of such a magistrate has an instinctive leaning to research. In the case of our associate, I have been led to look through the volumes which contain his opinions. I will not enter into particulars; but while those opinions are to be found in forty-two volumes of the Reports of the Massachusetts Supreme Court, they are also omnipresent in no less than eighty-two volumes of the Reports of the Supreme Court of the United States. Here are one hundred and twenty-four solid octavos, to all of which he was a prominent contributor. In round numbers, I find in these reports eighteen hundred opinions of Mr. Justice Gray, averaging some three pages each, running from a few lines only to thirty pages, and aggregating, as nearly as I have been able to estimate, about six thousand pages of solid printed matter. In comparison with such a Brobdingnagian outpouring, Sheridan's "voluminous" page of Gibbon becomes fairly Lilliputian. According to the best computation in my power to make, our late associate's judicial opinions aggregate about twice the printed matter of the "Decline and Fall."

As is not infrequently the case with eminent magistrates, it so came about with Horace Gray. A lay reputation and a professional reputation are two distinct things; and a judge who may be regarded in one way at a school of law, may be wholly otherwise esteemed in an historical society. He is there chiefly known from his connection with cases which may, perhaps, best be described as being of a historico-political character. As Marshall's reputation in a body like ours is inseparably associated with Marbury *v.* Madison; as the name of Taney is, as unjustly as unhappily for him, tied in perpetuity to the case of Dred Scott; as that of Salmon P. Chase, who succeeded Taney, is associated with Hepburn *v.* Griswold; so the memory of Horace Gray will, I fancy, be more closely identified with the case of Juilliard *v.* Greenman,[1] commonly

[1] 110 U. S. 421–470.

known as the Legal Tender Case, than with any other issue on which it was his fate to pass; and, as I have just said, those issues were hundreds in number. Most unfortunately, also, as I apprehend, in Juilliard *v.* Greenman, he failed to follow that tendency of his to historical investigation and conclusions so noticeable in the cases I have instanced. On the contrary, his avoidance of this line of reasoning and process of investigation was conspicuous. Yet never, in his whole career, was there a case presented to him which to a greater extent invited historical inquiry, and never one the decision of which depended less upon precedent, and more upon the results of that inquiry.

This, perhaps, is not the place, nor, assuredly, is the present the time, to enter upon the discussion of this long-debated issue, which had, at once, its legal, its constitutional, its moral and economical, and its historical aspect; and yet in one respect it had for us here a peculiar interest. George Bancroft's name was borne upon our rolls for considerably over half a century. It had been upon them over fifty years when the decision in Juilliard *v.* Greenman was made public. He at once entered the lists, historically challenging the conclusions therein reached. In the field of American historical research, George Bancroft was a much higher authority than Horace Gray; and now, at eighty-five, devoting to the task, to use his own somewhat pathetic words, "many of the few hours that may remain to me for labor," he marshalled, in a short publication,[1] an array of facts and utterances which, in any unprejudiced mind, demolished, from the historical point of view, the basis upon which our other associate rested his case. I doubt whether it would be easy to cite any instance in which the economist and historical investigator were more distinctly at variance with what may, perhaps not inaptly, be termed the technical interpreter of the fundamental law. As is sufficiently apparent from what I have already said, for our departed associate as a jurist, and within his peculiar province, I entertained a profound respect; but he had his limitations. He was not a follower of Adam Smith; nor, while an acute and careful investigator, was he a disciple of Gibbon. For myself, I do not believe that sound constitutional law can be

[1] A Plea for the Constitution of the U. S. of America wounded in the House of its Guardians, New York, 1886.

built up on a foundation of vicious political economy and history distinctly erroneous.

Whether a revision for good or for evil, there seems, to the lay mind at least, no great room for doubt that the name of Mr. Justice Gray will thus remain closely associated with one of the most significant and far-reaching changes ever worked by judicial construction in constitutional jurisprudence. When he went on the bench of the Supreme Court, the United States was held to be a government of "limited and enumerated powers" only, to the exercise of which the Executive and the Legislative both were strictly held by the Judiciary. When he died, and largely as the result of his influence as exercised and expressed in the case of Juilliard *v.* Greenman, this rule had practically ceased to obtain, and the national legislature was clothed with broad and undefined parliamentary powers, covering practically the entire field of sovereignty in all matters where the exercise of such powers was not expressly inhibited to it. Thereafter the legislative department became the sole judge of what laws were "necessary and proper" for the execution of the "limited and enumerated powers"; itself, in all cases of doubt, deciding on questions of emergency and degree. The burden of proof was thus apparently shifted, and Congress can exercise whatever sovereign powers are usual among civilized governments unless expressly forbidden so to do. Through judicial construction, anything, and well-nigh everything, was brought within the scope of a, presumably, wise "legislative discretion." This revolution, for such it amounts to, was, it is true, gradual, dating from some of the most famous of the decisions of Marshall. It had been greatly accelerated by the issues, events and discussions of the Civil War, and was plainly foreshadowed in the so-called Legal Tender Cases of 1870,[1] reversing the decision in Hepburn *v.* Griswold. But it was not practically enunciated by an almost unanimous Supreme Court[2] until our

[1] 12 Wallace, 529–570.

[2] In the case of Hepburn *v.* Griswold, decided at the December term, 1869, the court stood five to three against the constitutionality of the Legal Tender Act of 1862. In the Legal Tender Cases, decided one year later at the December term, 1870, this decision was reversed, the court standing five to four in favor of the constitutionality of the act. In Juilliard *v.* Greenman, decided at the October term, 1883, the court stood eight to one, confirming and extending the conclusions set forth in the decisions of 1870. In this last case the only dissen-

Associate filed its opinion in 1884. The decision then reached, unlike those which had preceded it by, respectively, sixteen and fourteen years, reflected what must be assumed to be the sober, second thought of the court. Those had been rendered at a time when the passions of a great conflict had not yet subsided, and the fresh memory of its extreme exigencies irresistibly tended to the development of all sorts of theretofore undreamed of "war powers" in the Constitution; this, a judicial finality, was calmly enunciated in a period of profound peace, when no pretence of an existing emergency could be advanced. The passage of nearly a score of years sufficed to clear men's minds; yet, to use the metaphor of Charles Sumner, the medicine of the Constitution was, under these conditions, pronounced its daily food. The last vestige of the old strict-construction, State's-rights school of jurists was thus swept by the board. Probably inevitable, perhaps this was best; in any event Mr. Justice Gray served as the mouthpiece of the court in finally promulgating the new dispensation. Moreover, it is of my personal knowledge that he himself felt no doubt as to the legal correctness of the position then taken under his guidance; and, to the last, he fully believed he was but moving on the path blazed out by Marshall, to the end which Marshall himself would have reached had he been confronted by the issues presented. Perhaps it was so; but, in any event, to leave the fundamental law other than he found it, and, in his own belief, both strengthened and broadened, is a large professional mark for any man to make. At least, it so seems to the unillumined historical investigator.

To purely literary work, I do not think Horace Gray felt any call. I doubt if the artistic side, at least in literature, appealed strongly to him. He was critical and logical, and he was not imaginative. This is very apparent in his single occasional effort, so far as my knowledge goes of what he attempted in that way, — his address on Marshall, at Richmond, on the 4th of February, 1901. It is severely legal. Largely made up of references to authorities and quotations from them, the absence of all generalizations and essays at philosophical thought is as conspicuous as is the severity of style.

tient was Mr. Justice Field, representing the Pacific Coast circuit; while he and Mr. Justice Miller, of Iowa, alone remained of those who took part in the original decision of Hepburn *v.* Griswold.

This is not the place, nor am I the person, to undertake to assign to Judge Gray the grade that may rightfully be claimed as his in the long list of our eminent magistrates and jurists. Yet, if asked, I should say that, of all the judges I have ever personally known, or whom it has been my privilege to observe and in my own way make estimate of, I should place him third. First, would be Lemuel Shaw; second, Benjamin R. Curtis; Horace Gray would follow. This is much, for it is a great company to stand in. If I might venture upon a more detailed estimate, I should add that, in his intellectual make-up, while Gray had much logical power and an almost phenomenal memory, which not infrequently asserted a mastery over his generalizing faculty, — while he had a strong grasp on some principles, which at times he was disposed to carry beyond the limits of what is reasonable, — yet he lacked a certain philosophical cast of mind, which has been the distinguishing feature of all jurists of the very first rank, and also that massive practical common-sense which is so prominent a characteristic of great lawyers of another stamp.

Turning now to other characteristics of the individual, and the great factors in life, I should class Horace Gray as distinctly among the fortunate men I have known. He was contented; and, always busy, he liked his occupation. Over sixty years of age, having thoroughly enjoyed a single existence, his subsequent life was made distinctly happier and more satisfactory to him by marriage. After a man is fifty, and his habits have become fixed, matrimony, it is needless to say, is a dangerous venture. In the case of Gray it was wholly fortunate in its outcome. With a sufficiency of means, and no taste for immoderate expenditure, he was able to indulge in everything which essentially contributed to his enjoyment. Delighting in his profession, he magnified his office. Holding his official standard high, he thoroughly enjoyed his eminence; finally, that which is misery to many was a pleasure to him, and he actually liked to sit with his colleagues and listen to arguments. His mind was active, his sympathies wide. A man of strong prejudices, religious, political, literary and social, which often affected his bearing towards those with whom he came in contact, the moment he ascended the bench, he took in the significance of whatever was presented to him wholly unclouded by feeling. In a large way his ambition was grati-

fied. After being nearly twenty years upon the Supreme Bench of Massachusetts, ascending step by step from the position of junior Associate to that of Chief Justice, when the novelty of his position had worn away, and what might be called its monotonous drudgery would have commenced, it was his great good fortune to be transferred to Washington, and so into a wholly new legal, social and intellectual atmosphere. It was a change he keenly enjoyed. One thing only was needful to the full fruition of his wishes, — to have the measure filled, pressed down and overflowing. He would have liked to round out his forty years upon the bench, — to exceed all records in that respect. This, and this alone, was denied him. At the date of his resignation he lacked a little more than two years of the hoped-for period; though, so far as I know, the term during which he actually served exceeded that of any other among the occupants of the benches of our courts of last appeal.

I cannot close without bearing testimony to the courage and cheerful dignity with which our friend faced the inevitable when at last it came. Stricken down at Washington five months before he died, he at first, and for long, clung to the hope that he would sufficiently recover to resume the familiar duties he so much loved. He set great store on the recuperation sure to follow a return to his native air. Mentally his faculties were unimpaired. To the end he thought as clearly, and talked as distinctly, as when in perfect health. But, with his heavy frame, physical movement was difficult. The close was plainly near. He manfully recognized the fact; and, without repining, resigned his position. Subsequently I saw him but once; but that last meeting left on me only the pleasant memory of an August morning spent with an invalid in cheerful and reminiscent talk, on a gallery overlooking a sparkling sea from which came up a cool, strong summer atmosphere.

To sum it up, take Horace Gray's life for all in all, it was one of great usefulness and dignity; and, moreover, of much enjoyment. It stands a high example. Here we shall not miss him; for, during the now somewhat long period of my own membership of this Society, I remember to have seen him at but one of our meetings. Nevertheless, he was, as I have said, properly of our number; and with its disappearance a

name than which it could boast none more distinguished will have been stricken from its roll. Nor was he forgetful of this Society at the close. Two pictures belonging to him, which he greatly prized, were bequeathed to us, — both from the brush of his friend William M. Hunt; — one, a portrait of Chief Justice Shaw, who had preceded him as the head of the Supreme Court of Massachusetts, and whom he so much revered; the other that of John A. Andrew, the great war Governor of the Commonwealth, to whom he owed his first judicial appointment. Both find a fitting final resting-place here, and will long serve as a reminder of him to whom they belonged, and from whom they came.

Mr. SOLOMON LINCOLN read the following characterization of Judge Gray: —

I am to speak of Judge Gray as a lawyer and magistrate.

In the other great branch of the English-speaking race a considerable successful experience at the bar is thought to be an essential condition for promotion to the bench; and judicial positions are held to be the prizes of active practitioners of the profession.

In America, at least in the case of judges appointed by the executive power and not selected by popular election, it is very common to select judges for a presumed fitness for the position manifested and acquired in other ways than by experience in practice. If we are to judge by results it is not clear that one system has much advantage over the other.

Judge Gray furnishes an instance of a distinguished judge who yet had but a limited experience of actual practice.

He was admitted to the bar in 1851 at the age of twenty-three. Three years later, in 1854, he was appointed Reporter of our own Supreme Court. August 23, 1864, he was appointed a Justice of that court. In December, 1881, he was transferred to the Supreme Court of the United States, and he resigned his office as Justice of that court in 1902. Thus, of fifty-one years of professional life, thirty-eight were passed upon the bench; he was reporter for seven years, and he was in practice but six years, and these chiefly the earliest.

His career upon the bench, therefore, completely overshadows his experience as a practising lawyer. It is as a

judge that his fame was acquired, and in that light we must consider him.

Of course the mental aptitudes and inclinations which especially distinguished and fitted him for membership in this Society could not fail to prevail in any position which he might hold. Conspicuous among these traits were his historical bent and his remarkable memory.

His duties as reporter furnished a field for these faculties. He necessarily became familiar with the jurisprudence of Massachusetts as exhibited in the State Reports which preceded his own, and his intimate acquaintance with all cases heard while he was reporter supplied him not merely with a fresh knowledge of the law, but furnished him a familiarity with practice usually acquired by an active life at the bar.

He was thus able upon the bench to supply what is especially noticeable in English judges and much less conspicuous in our own, — a ready familiarity with decided cases, displayed not merely in the written opinion, but orally during the hearing of the cause.

So when in 1864 he was appointed by Governor Andrew to our highest court, he came to it well equipped for his duties.

He was possessed of high mental powers cultivated by the best education which our Commonwealth affords, of energy, of indefatigable industry, and of a marvellous memory and familiarity with the decisions not merely of our State court, but of those of our country and of England. He was master also of a lucid style, which in a large degree resulted from the clear views which he always held upon the propositions before him.

Thus equipped, he took his seat upon the bench at the early age of thirty-six, well prepared to do his full share of work as a member of the court; and no one can truthfully suggest that he ever failed to do that share. Especially as Chief Justice he exercised a close supervision over all the work of the court, and both in open court and, as we are informed, in the preparation of its published volumes, he exercised a scrutiny which stimulated a most desirable precision on the part of all officials within his reach.

Upon the whole I think it will be concluded that, as Chief Justice of our court, he secured a reputation which even his distinguished services at Washington did not surpass. This

is not the place for a discriminating criticism of his judicial opinions. Many of them are marvels of historical study, containing an absolutely exhaustive discussion of all cases bearing on the proposition before the court, and relieving his associates and successors of the need of traversing the same fields again. He was especially distinguished in the common law. The years during which he served upon the court were not creative years. He was not called upon to do the work which Marshall did upon the Supreme Bench of the United States, or Shaw upon our own. But his opinions displayed his qualities. They exhibit extraordinary research, complete learning, a scientific treatment of the law, breadth and foresight, propositions clearly apprehended and tersely expressed. They are closely confined to the question in dispute, deciding what the case requires and no more, and wandering into no unnecessary and hence dangerous dicta. It follows that his reasoning was rarely if ever overruled. For the moment I recall no instance.

So voluminous and complete are many of his opinions, and so great is their number, that they constitute a large share of the decisions of our court while he was upon the bench, and they do their full part in maintaining the high rank which our court has always held among those who practise our system of law.

It is not valuable to draw distinctions between his opinions delivered when Chief Justice of Massachusetts and those rendered in the court at Washington, if such exist. The latter necessarily deal with a somewhat different class of questions, but the same personal characteristics are manifest in all. It would no doubt be premature now to assign him definite rank among great judges, but that rank must unquestionably be high.

Regarding Judge Gray more strictly in his capacity of a magistrate presiding in court, it is superfluous to speak of his patience and his impartiality. These are always implied when we speak of a Massachusetts judge, but more than most judges he maintained the traditions of the court room.

Judge Gray was a gentleman by inheritance and by temperament. He had an old-fashioned respect for the dignity of the State and for constituted authority, and he was determined to maintain this dignity and authority by word and demeanor. He was especially strict in enforcing the propri-

eties of the court room, and if sometimes he called attention to matters which seemed trivial, this was but a manifestation of his watchful and commendable purpose to secure order and maintain unfailing respect for the majesty of the law. He was impatient of unsound legal propositions and of insincere argument, and was inclined to deal with such hastily; but beneath the severity of the judge lay a kind heart always anxious to repair any pain unnecessarily caused. And while scrupulous to enforce respect and decorum among members of the bar, he yet paid them unusual deference. He was loyal to the profession and jealous of its dignity. He was especially thoughtful and encouraging in his treatment of younger members of the profession.

His commanding form and personal presence well suited his high office. With him departs a large measure of that culture, ability, and weight of character which we have been accustomed to associate with the upright and venerable judge.

Mr. Thornton K. Lothrop, having been called on, read a tribute to General Loring as follows: —

General Charles G. Loring, who died on the 18th of August at the age of seventy-four years, was emphatically a Bostonian, the descendant of an old Boston family; the son of an eminent Boston lawyer, he was born in Boston, educated in Boston, and passed substantially his whole life here. He graduated at Harvard in 1848, and on leaving college joined Professor Agassiz in a scientific trip, or one partly scientific, around the shores of Lake Superior, then a remote wilderness. Later he went to the Lawrence Scientific School, and was for a time employed in surveying for a railway in the State of New York.

In 1852–53, while travelling with his father in Europe, he was taken dangerously ill with trouble of the lungs and was ordered South. He at first went to Malaga, but afterwards (in the winter of 1853–54) joined a party of young men in a trip up the Nile to the second Cataract. It was on this visit that he first became interested in the antiquities, monuments and history of Egypt, which were his favorite study for the rest of his life. He began at this time the collection of an Egyptian library and of smaller objects of Egyptian art. On

his return to this country he read law for a while with his father, and acted as treasurer of a small manufacturing company.

When the Civil War broke out in 1861, he was eager to enter the army, and was commissioned captain in December of that year; was made an assistant inspector-general with the rank of lieutenant-colonel in July following, and was mustered out in August, 1865, after the close of the war. His services were always as a staff officer, and their value was recognized by various promotions for gallant and meritorious conduct; he was made brevet-colonel after the battles of the Wilderness, Spottsylvania, Bethesda Church, etc.; brevet brigadier-general in August, 1864, for his services in the campaign in eastern Tennessee and at the siege of Knoxville, and in July, 1865, a brevet major-general for his services during the war.

In the winter of 1868–69 he made a second trip up the Nile, again to the second Cataract, carrying with him a library of books on ancient and modern Egypt, and devoting his time to the study of the monuments and history of that country. He met the Egyptologists of that day and learned what he could from them. He studied the collections accessible there, and, after his return to Europe, those in the great continental museums as well as in England.

In 1870 a certain number of gentlemen were incorporated here as trustees of the Museum of Fine Arts. The purpose of their association was to make, maintain, and exhibit collections of works of art, and to afford instruction in the fine arts. The only material which they had at the outset was such collections as belonged to the Boston Athenæum, and for which that institution could no longer furnish a permanent home; the engravings which had been bequeathed to Harvard College by Mr. Francis C. Gray, and some other smaller collections. For the exhibition of all these temporary quarters were provided at the Athenæum. The first important gift received by the Museum after its incorporation was a collection of Egyptian antiquities originally made by an English gentleman during the years from 1828 to 1833, and especially valuable for the unquestioned authenticity of the objects of which it was composed. General Loring was undoubtedly the fittest, if not the only, person here at that time competent to arrange and classify this collection. At the request of the then curator he

undertook this work; he was warmly thanked by the trustees for his generous and valuable assistance, and in recognition of this service was in 1872 chosen a trustee, and in 1876 curator of the Museum; the next year the title of his office was changed to that of director; and from the time of his election as curator up to the first day of May of this year, when he resigned his office, a period of twenty-six years, he was the administrative head of the Museum. When he first entered upon his duties, the possessions of the Museum were easily contained in a single room; when he resigned, the present building, originally opened in 1876, and the addition built ten years later, were insufficient for the proper exhibition of its collections.

At the opening of the present building only six years after the Museum was incorporated, the collections were indeed scanty, — a few plaster casts, some marble, some porcelain and pottery, half a dozen pictures, etc. It was not difficult for one man to arrange, classify, and take personal oversight and supervision of all that the Museum had. The difficulty was to find ways and means to meet the annual expenditures. The change came gradually; at first there were exhibitions of loaned objects, but gradually gifts began to come in, — gifts of money for the purchase of works of art, gifts of works of art themselves, and deposits of works that may be considered permanent. The classes into which the present collections of the Museum are divided are greater than the number of objects owned by it when it was originally opened. The value of one of these collections may be best shown by quoting the substance of a note in the catalogue of the Museum at Kioto, Japan: "This is the second best collection of Japanese lacquer in the world; the best is to be found in the Fine Arts Museum, Boston." In its collection of classical antiquities our Museum stands the fifth or sixth in the world; and in its pottery, porcelain, and textile fabrics its possessions are by no means to be despised. The increase of the collections was at first gradual, and it was not difficult for the director to arrange and classify the new gifts or purchases as they were received; but when the additions to the Museum increased more rapidly, both in number and variety, it soon became beyond the power of any one man, however well equipped, to do all this work by himself. Gen-

eral Loring was without special training or experience in museum work or any practical knowledge of the systems of classification or arrangement approved by the heads of the great museums of other countries; to-day the possession of such special knowledge, training, and experience would be considered of the first importance, if not absolutely essential for any man aspiring to be the head of a great museum; but twenty-five years ago such qualifications were not to be had, and were no more recognized as important factors in the choice of the director of a museum than the special training now required of a librarian was then considered a prerequisite for election to such a position. General Loring's interest, zeal, and devotion to his work were untiring. His labors for the Museum were unceasing, and he may be truly said to have worn his life out in its service. The disadvantages which have been alluded to made his work all the more harassing and burdensome; and his difficulties were also increased in other ways; he was not by nature a person of order, method, and system; he wished the Museum to be his own creation, and was (perhaps unconsciously) reluctant to give his assistants the scope and freedom in their several departments which would have materially relieved him and been of great advantage to their work. His love for his work, his untiring energy, and his loyalty and devotion to the task he had undertaken were unquestionable, and the criticisms that have just been suggested should not be allowed to detract from the work he accomplished, of which the Museum of to-day is the monument. As its first director he filled a great place in this community, and was largely instrumental in promoting the growth of knowledge and of interest in the fine arts which has been so marked a characteristic of the last quarter of the century just ended.

Mr. WILLIAM S. APPLETON said: —

A few words should appear on our records in notice of the death of Dr. Joseph J. Howard, who stood second in seniority on our roll of Corresponding Members. He was a prolific author and editor of volumes on the subjects of Genealogy and Heraldry. In recognition of the work which he accomplished in these studies, the Duke of Norfolk, as Earl Marshal, appointed him an official of the College of Arms, with the title

of Mowbray Herald Extraordinary. He was chosen a Corresponding Member of this Society in 1866, undoubtedly on the nomination of Mr. Whitmore, supported I feel sure by Mr. Winthrop, at that time President. I never met Dr. Howard, though I have at various times exchanged letters with him. He died on the 18th of April last.

Mr. Edward Channing spoke substantially as follows: —

Some time ago Dr. William Henry Schofield of Harvard University placed in my hands an interesting paper by Professor Sophus Bugge, of the Christiania University. It is entitled "Norges Indskrifter med de yngre Runer, Udgivne for Det norske Kildeskriftfond; Hoenen-Runerne fra Ringerike: Kristiania, 1902." The paper itself is in Norwegian, but Professor Bugge has appended a résumé which is here given at length.

Résumé.

Peu de temps avant l'an 1817 on trouva dans la terre une pierre runique à la ferme de Hoenen près de l'église de Norderhov à Ringerike dans le midi de la Norvège. Cette pierre avait à peu près 126^{cm} de longueur, 21^{cm} en largeur et 10½^{cm} de grosseur. Elle avait une inscription en runes très indistinctes.

L'inscription fut reproduite en 1823 par un dessin de l'antiquaire L. D. Klüwer. L'original de ce dessin n'a pas pu être retrouvé, mais on en a une copie au musée de Bergen. Cette copie est reproduite en demi-grandeur dans cette dissertation, p. 2, et sur l'échelle de l'original, mais divisée en deux, p. 4–5. La pierre runique a disparu entre les années de 1825–1838, et malgré bien des recherches, on n'a pu la retrouver.

Il est évident que quelques-unes des runes de l'original sont rendues incorrectement par M. Klüwer. Dans la reproduction suivante des runes j'ai indiqué par une étoile les runes dont j'ai corrigé les caractères.

Au dessous des runes j'ai fait imprimer une transcription en lettres latines, dans laquelle les lettres dues à ma correction se trouvent mises en parenthèse.

Cette inscription est en vers et avec l'orthographe ordinaire de l'ancienne langue norvégienne elle doit être rendue comme voici:

Út ok vítt ok þurfa
þerru ok áts
Vínlandi á ísa
í úbygð at kómu;
auð má illt vega,
[at] dφyi ár.

Ce texte peut se traduire en prose latine à peu près comme voici :

"In mare vastum late delati, Vinlandiam versus in glaciem regiones inhabitatas adjacentem umore fameque confecti egressi sunt; beatas res adversa fortuna auferre potest, ita ut homo immature moriatur."

C'est une inscription à la mémoire d'un défunt, dont on doit avoir mentionné le nom au commencement de l'inscription. Ce commencement, qui n'a point paru de notre temps, a probablement été gravé sur une autre pierre disparue depuis longtemps.

Le défunt était un Norvégien de Ringerike, qui a subi de rudes souffrances pendant un voyage dans la mer glaciale du Nord et y a probablement péri. Dans les sagas de l'Islande le mot de l'inscription *úbyggð* "pays inhabité" se dit specialement en parlant des contrées inhabitées du Groënland.

La pierre nous dit que dans ce voyage le Norvégien, en mémoire de qui le monument a été érigé, et ses compagnons de voyage, ont quitté le vaisseau, et, affamés et mouillés, ont mis pied sur la glace dans une contrée inhabitée "vers le Vinland," c'est-à-dire à l'ouest près des côtes septentrionales de l'Amérique.

Comme M. G. Storm nous a fait voire, *Vinland* était l'ancien nom norvégien de la nouvelle Écosse de l'Amérique du Nord. Leif Eiriksson (Leif fils d'Eirik), d'origine islandaise et demeurant au Groënland, découvrit ce pays en l'an 1000 et lui donna le nom.

Cette inscription, trouvée à Ringerike, doit dater d'entre 1010 et 1050, à juger tant du contenu que de l'espèce de ces runes.

Nous apprenons, comme nous venons de le dire, par les sagas islandaises qu'une partie de l'Amérique du Nord fut découverte par des hommes parlant la langue norvégienne. Notre inscription nous présente donc le plus vieux témoignage de cette découverte. Elle est le plus ancien document connu en Europe, dans lequel il est fait mention de l'Amérique.

It will be noticed that the stone on which the inscription is has long since disappeared. The inscription is also stated to be very indistinct. It was copied in 1823, but the original copy has also been lost. There is, however, a reproduction of the original copy still in existence, and from this Professor Bugge has made his translation. Furthermore, it unfortunately appears from the paper that the characters standing for Vinland are partially obliterated. Considering these things, the precise value of Professor Bugge's work is by no means clear, but the paper will have an interest for all students of early American history.

Mr. Worthington C. Ford presented a photographic facsimile of the manuscript pages of the so-called "Abstract of the Laws of New England," printed in London in 1641, and spoke in substance as follows: —

Cotton's "Moses his Judicials."

Towards the end of last May I received a letter from London, asking what disposition should be made of certain negatives taken at the order of my brother, Paul Leicester Ford. One could not work with that investigator for nearly twenty years in the close intimacy of friendly rivalry, as I have done, without recognizing his wide interests, his eager pursuit of information, his thoroughness of treatment, and his buoyant enthusiasm in the face of difficulties. There are better antiquarians, better bibliographers, better historians, better essayists; but in the whole number of laborers now working in the original materials of American history, I do not know of one who unites so catholic a taste with so happy and fruitful a faculty of using his material, of one who has the like leisure and means to pursue his studies. We loosely speak of "lucky finds" and "fortunate discoveries"; but we are apt to overlook the years of training, the immense waste of time spent in fruitless searches, and the cost of developing the expert ability which can seize and interpret an isolated paper, connecting it with others so as to tell a consecutive story and provide that additional fact or supposition that will lead to further discoveries and more valuable interpretation. The best history is a piece of mosaic; fortunate is he who can add one tiny piece of stone to a picture already well developed, a stone that will modify the color of the whole or the relation of the parts. There is no such thing as luck or chance in such work.

Knowing my brother's remarkable capacity for tracing good material, I felt assured that the negatives were worth bringing to this country. Before I could examine them a paternal government, for some inscrutable reason, collected a duty upon them of forty-five per cent *ad valorem*, as a "manufacture of glass," — a fact mentioned to place on record the encouragement our law-makers give to the investigator who would go outside of his own country for original and valuable records. They were described to me as photographs

of an imperfect manuscript preserved in the collection of the Duke of Bedford, at Woburn Abbey, manuscript No. 250, mentioned in one of the first reports of the Historical Manuscripts Commission. Its title was "An Abstract of the Laws of New-England," and I at once saw the line of conjecture my brother was following. The Abstract was printed in England in 1641, and, it has been supposed, from a manuscript of John Cotton, perhaps in some ways the leading minister in New England, for he permitted politics to sway his judgment in a manner that kept him well to the front for many years, and not always to his credit. Moral cowardice is not a desirable quality in one who aspires to be a spiritual leader. That the abstract was written by Cotton was acknowledged in the second edition, printed by William Aspinwall, in 1655. Hutchinson, too, saw a copy of these proposed laws in Cotton's writing, edited by John Winthrop; and he included this version among the printed Hutchinson papers, which have been reprinted by the Prince Society. Evidently my brother believed that he had found the Cotton manuscript. A glance convinced me, however, that there is not a stroke of Cotton's writing in these pages. Mr. Upham believes they were prepared by some scrivener, as the writing is of the formal type of that day. A set of these photographs I take pleasure in depositing in the collections of this Society.

While looking through some Cotton manuscripts in the State Archives, I found one which bore a pencil indorsement[1] as being in the handwriting of John Cotton, 1643, and having the title "How far Moses Judicialls bind Mass." The somewhat striking title "Moses Judicialls" recalled some similar title encountered in my readings, but it was some time before I could again locate it. Winthrop records, under date October 25, 1636: —

"Mr. Cotton being requested by the General Court, with some other ministers, to assist some of the magistrates in compiling a body of fundamental laws, did, this Court, present a copy of Moses his judicials, compiled in an exact method, which were taken into further consideration till the next General Court." [2]

[1] Dr. Green tells me the indorsement was made by Charles Deane. The paper bears a much older indorsement, made in the last century, "Opinions of the Elders, 1643."

[2] Winthrop, History, I. 240.

So far as has been known no copy of this code or body of laws has come down to us. Mr. Whitmore merely mentions the fact of their presentation, and I do not find any other mention of them in any history of the laws of Massachusetts Colony. Before giving the text of this Cotton manuscript I wish to consider the question of the body of laws known as "Moses Judicialls." In doing this, I am obliged to repeat certain facts which are doubtless well known to you, but my excuse is that from a new study something novel may come.

Mr. Whitmore quotes a vote of the General Court taken 6 May, 1635, deputing the Governor [Haynes], the Deputy Governor [Bellingham], John Winthrop and Thomas Dudley, to prepare a "draught of such laws, as they shall judge useful for the well ordering of this Plantation, and to present the same to this Court." He also cites a passage from Winthrop's History in confirmation, where the reason of such a deputation is given. "The deputies having conceived great danger to our State in regard that our magistrates, for want of positive laws, in many cases, might proceed according to their discretions, it was agreed, that some men should be appointed to frame a body of grounds of laws, in resemblance to a Magna Charta, which being allowed by some of the ministers and the general court, should be received for fundamental laws."[1] It should be noted in passing that this commission was purely civil in its composition, no clergyman being upon it. The results of its labors were to be submitted to the ministers, and when accepted by some of them, would become law.

Mr. Whitmore, however, overlooked what is to me a very suggestive passage in Winthrop under date January 18, 1635–6, or eight months after the commission on laws was appointed. It is known that our ancestors did not live so wholly within the bounds of brother unity as to be free from serious differences, from petty quarrels, and from carping and backbiting of one another. The very earnestness of their conduct in these disputes is evidence of their narrow conviction of the perfect propriety of their carriage and language. Among other known differences was one between John Winthrop and Thomas Dudley. The origin of the coolness between the two men fortunately does not concern us. The existence of it is beyond question, and was so open that it had created factions

[1] History, I. 191.

among the people. With a desire to mend matters, some of the rulers felt called on to interfere. We may acquit them of a meddling spirit, for it is strange to us how near akin to family differences these early quarrels were, and each member of the community was interested in having a part in them. Accordingly Sir Henry Vane and the Rev. Hugh Peter (later a thorn in the flesh of the magistrate) called a meeting to consider the difference between Winthrop and Dudley, both of whom, it should be remembered, were members of this commission on the laws. The meeting comprised the other two members of the commission, the Governor and Deputy Governor, Mr. John Cotton, Mr. Thomas Hooker, and Mr. John Wilson — thus bringing in an ecclesiastical element absent from the body charged with preparing fundamental laws. Winthrop's account of the meeting deserves to be given in full, the more as the decision of the meeting was against his view: —

"After the Lord had been sought, Mr. Vane declared the occasion of this meeting, and the fruit aimed at, viz. a more firm and friendly uniting of minds, etc., especially of the said Mr. Dudley and Mr. Winthrop, as those upon whom the weight of the affairs did lie, etc., and therefore desired all present to take up a resolution to deal freely and openly with the parties, and they each with other, that nothing might be left in their breasts, which might break out to any jar or difference hereafter, (which they promised to do). Then Mr. Winthrop spake to this effect: that when it pleased Mr. Vane to acquaint him with what he had observed, of the dispositions of men's minds inclining to the said faction, etc., it was very strange to him, professing solemnly that he knew not of any breach between his brother Dudley and himself, since they were reconciled long since, neither did he suspect any alienation of affection in him or others from himself, save that of late he had observed, that some newcomers had estranged themselves from him, since they went to dwell at Newtown; and so desired all the company, that, if they had seen any thing amiss in his government or otherwise, they would deal freely and faithfully with him, and for his part he promised to take it in good part, and would endeavor, by God's grace, to amend it. Then Mr. Dudley spake to this effect: that for his part he came thither a mere patient, not with any intent to charge his brother Winthrop with any thing; for though there had been formerly some differences and breaches between them, yet they had been healed, and, for his part, he was not willing to renew them again; and so left it to others to utter their own complaints. Whereupon the Governor, Mr.

Haynes, spake to this effect: that Mr. Winthrop and himself had been always in good terms, etc.; therefore he was loath to give any offence to him, and he hoped that, considering what the end of this meeting was, he would take it in good part, if he did deal openly and freely, as his manner ever was. Then he spake of one or two passages, wherein he conceived, that he dealt too remissly in point of justice; to which Mr. Winthrop answered, that his speeches and carriage had been in part mistaken; but withal professed, that it was his judgment, that in the infancy of plantation, justice should be administered with more lenity than in a settled state, because people were then more apt to transgress, partly of ignorance of new laws and orders, partly through oppression of business and other straits; but, if it might be made more clear to him, that it was an error, he would be ready to take up a stricter course. Then the ministers were desired to consider of the question by the next morning, and to set down a rule in the case. The next morning, they delivered their several reasons, which all sorted to this conclusion, that strict discipline, both in criminal offences and in martial affairs, was more needful in plantations than in a settled state, as tending to the honor and safety of the gospel. Whereupon Mr. Winthrop acknowledged that he was convinced, that he had failed in overmuch lenity and remissness, and would endeavour (by God's assistance) to take a more strict course hereafter. Whereupon there was a renewal of love amongst them." [1]

The lesson was not wholly taken to heart, for we find Winthrop running his pen through some of the death penalties proposed by Cotton in his abstract of the Laws of New England.

This admonishing of Winthrop may have pointed to some difference among those chosen to prepare the new code of laws. Bellingham was not one to incline to the side of mercy or lenity, and what is known of Haynes and Dudley does not indicate men willing to modify their stern conception of what was due the magistrates from the governed. Israel Stoughton had only recently been disabled from bearing any public office in the Commonwealth, for the space of three years, for affirming the assistants were not magistrates. Opposition or criticism of the acts of the authorities was severely punished, and to lift a little the burden of the power of the magistrates was interpreted as a blow against their absolute supremacy — so essential in their opinion to the safety of the settlement. This little comedy of hectoring Winthrop may thus have had

[1] Winthrop, I. 177, 178.

its serious side, and shows a wish to reduce a member who had shown some signs of being recalcitrant to full submission. At all events in May following a new and larger committee was appointed, and a change was made in its composition.

At the General Court, May 25, 1636, it was ordered that "the Governor [Henry Vane], the Deputy Governor [John Winthrop], Thomas Dudley, John Haynes, Richard Bellingham, Esquires, Mr. Cotton, Mr. Peters and Mr. Shepherd are entreated to make a draught of laws agreeable to the word of God, which may be the Fundamentals of this Commonwealth, and to present the same to the next General Court."

The ministers were no longer to be consulted only after the laws had been prepared. Three clergymen were on the committee, and the new Governor also took his place upon it. It was in October following that Cotton submitted his "Moses his Judicials." Not until 1639 did the General Court receive the two codes, one prepared by Cotton, which was rejected; and the other by Nathaniel Ward, which was accepted, modified, and known as the Body of Liberties.

It seems to me, therefore, a legitimate conclusion that the manuscript of John Cotton should be placed earlier than the year 1643 assigned to it by the indorsement. It belongs somewhere between 1636, when the Judicials were framed, and 1641, when they were rejected.[1]

The paper opens with the question whether the laws of Moses were given to the Jews and no other people, or whether all Christians as people of God should not establish the same laws and penalties. They raise the difference between temporary and perpetual features of these laws, and undertake to indicate what special features should be maintained and enforced, what applied only to the Jews, and what may have been superseded by the New Testament. Its general tenor is best indicated by Cotton's phrase that "the more any law smells of man the more unprofitable."

It must be admitted that only a few grains of wheat are found in this bushel of chaff. Like so much of the thinking and writing of that day, it impresses one as futile and unsub-

[1] Mr. Upham calls my attention to one piece of evidence against my view. He states that "the watermark of the paper is the same as, or quite similar to, the watermark of the original Colony record (of House of Deputies) for 1643, and seems to be the same as I have found on papers from 1644 to 1651."

stantial — until we suddenly find the ideas made active and applied in bloody persecution and repression of free thought, as in the cases of Mrs. Hutchinson, the alleged witches, and the Quakers, — chapters of Massachusetts history which at one time found apologists, but have been told in all their horror and wretchedness, and with merciless truth, by our associate Mr. Brooks Adams, in his "Emancipation of Massachusetts."

The Cotton manuscript "How far Moses Judicialls bind Massachusetts," is evidently a brief record of a discussion upon the Judicialls, and as such is the only minute bearing upon them that has come down to us. It throws little light upon the nature or contents of the proposed code, but is of high interest in itself as a contribution to the history of law in Massachusetts. In my opinion the Abstract[1] is nothing more than Moses's Judicialls, and dates from 1636 rather than from 1641. The contents of the Abstract are all assigned to the Mosaic books and in the sections covering crimes answer to the Mosaic law. I therefore venture the assertion that in the Abstract of the Laws of New England we have the text of "Moses his Judicials," and this compilation should be regarded as the earliest body of laws framed in English America.

I was unable to decipher the writing of the Cotton manuscript, and in my need turned to the one man who is so entirely able as to leave no doubt as to the correctness of his reading. Mr. William P. Upham kindly made the transcription, and my cordial and grateful thanks are given to him for his disinterested labors.

How far Moses Judicialls bind Mass[achusetts].

M[r] Phillips:

I take the questiõ thus, whether we as Xtians or as people of god, are not bound to establish the Lawes & penalties set down in the script. as they were giuen to the Jewes & no other but they;

Q. 2 th. open: [thence opening?]: 1. w[t] I meane by Lawes?

A The Lawes giuen to Jewes in script. some were Temporary. & only bound them during the time of the old Testament, 2 the rest were p[r]pet. [perpetual] & bind y[m] for euer; /

[1] The full title of the Abstract is An | Abstract | or the | Lawes | of | New-England, | As they are now established. | London, | Printed for F. Coules, and W. Ley at Paules Chain, | 1641.

The temporary Lawes are 1. all such as had any refer. to X^t & state of y^e gospell; as a shadow & rudiment: 2 any that had any speciall respect & p^rtic: [particularly] appropriated to the land of Canaan, or to the Jewes y^r dwellinge. /

The p^rpet [perpetual] Lawes are 1: the 10 Command. as deliv^rd on M: Sinay: 2 all such as haue grounds[1] ends or effects y^t are p^rpet. [perpetual]. & of these Lawes some are mixt; y^t haue some branches or circumstances temporary & yet the Law p^rpetuall; or w^e haue some branches & reasons p^rpet. [perpetual]. & yet law temporary, & so far as [as in ?] these Lawes y^r is any th: [thing] morall or p^rpet [perpetual], so far it binds; /

Q. 2. w^t ment by no other but these:

A: by this I meane not only those w^e are literally expressed; but also all such necessary consequences or diducts, y^t may be justly drawn from them.

Resp. all these p^rpet. [perpetual] Lawes bind vs;

Reas: 1. bec: [because] god. who was y^n bound vp in couenant w^th y^m to be y^r god; hath put vs in y^r stead & is become o^r god as well as y^rs & h: [hence] we are as m^c [much] bound to there Lawes as well as [them^s] [themselves ?]: /

Reas. 2. if god hath giuen vs no other for the gouerning of the com:wealth y^n we either may be Lawlesse; & haue w^t Lawes we please or else be bound to these; but god hath giuen vs no other nor are we Lawles. for we are vnder the law to god & to X^t; /

Reas. 3. if otherwise; we can make no vse of those lawes & penalties but they are as antiquated then we are bound to observe them

Reas: 4: / If the Jewes be now still vnder the bond of them & so to observe them w^n [when] they are an established commõ wealth; then we are bound to observe y^m; at: ergo: / bec.[ause] y^r is no other reuel: [revelation] that they shall be other Lawes;

Reas. 5. That w^e will be o^r wisdõ in the sight of the nations Deut. 4: 6: / so as they shall say this is a wise people. that we are bound to submit to, at: [ergo.]

Re[as]: 6. Those Lawes w^e are most right[eous] & answ: [answer] the right[eousness] of god they are to be submitted to by vs: at: ergo. Deut: 4: 8: /

Reas. 7: / Those Lawes w^thout obed: w^rto [whereto] the [land] is polluted & subject to curses & plagues they are to be submitted to: / at: ergo: Leuit: 18: 20: chapters compd: //

Reas. 8. The magistrate being in gods stead & judging for god; cannot judge as god will haue them but accord. to his own Lawes; h. those must be established. but the magist. is in gods stead & god hath no other Lawes but these. 2 Chrõ. 14: 4: etc.

[1] There is a cross-mark in the margin here.

Reas. 9: if X^t hath giuen vs a new command. & this new is the old w^c was frõ the beginning then Moses Judicialls bind; but X^t hath giuen vs a new command: Love thy neighbour as thy selfe: /

M^r Cotton.

Naturall Judicialls bind all; of morall equity
Q w^t are those Lawes peculiar to y^t state;

3:

1. Such as prepare for X^t, to come of y^m; many judicialls are such. / as the marrying of a mans brothers wife nexte of kin; as Ruth; // so Jubile tho someth: of a mixt [n^r] [though something of a mixt nature?] in Jubile; 2 the forme of y^r couenant came frõ hence as sometimes frõ the state of the people w^c did vary all people are fit to judge; sometimes God stirs up an eminent judge; they see God y^r in his wisdõ [vprit]nesse, w^n his child not so; & at last it comes to a monarchy; David was fit to rule y^m all; & it was fit it should come in a monarchy bec: X^t king was to come of them, & this brought in an hereditary gouernment by successiõ w^c else is not safe for any kingdom, or very seldõ fit for any natiõ; bec. X^t was to come in by promise of Davids loynes:

2. Such as concerne them as they were a peculiar church & none besides them in the woorld & sequestered frõ all people vnder heauen; to be a holy people to god [w^n] they only [inherite] the couenant: // as: —

1: if a man did marry a heathen not of the tribes of Israell vnles shee was a proselyte he was bound to put her away & her children; // we cannot put away indians; it may be s^d of Paul 1 Cor: 7: [of] those who are marryed before Xtianity &c: but y^ts not mentioned: // bec: a holy people to God & would have a holy seed: / but now not; but now s^th [saith] Paul how dost thou know but thou maist [mayest] convert thy wife; but in old Testament the L s^th [Lord saith] shee will pervert thee & turne away thy hart.

2: here falls some Lawes w^c did concerne that churches state; as those who denyed the alienation of land frõ a family; bec: it was fit that members of church should have a vote in m^rs [matters] of church, no Lords to have all & do all & h. it was that Deut: 15. y^r was a release of debts every 7 yeares bec: no brother should grow poore & y^t wo'ld put at peace at Jubilee all should be restored; / but now god tyes not hims: [himself] to on church; he would haue the members of church haue y^r liberty; for if on town should alienate y^r landes to gentlemen yet they may goe else w^r; // tho not good for a church to put all in on hand;

3 Such Judicialls w^e^ maintain & fortify the Ceremoniall Law, confirm & illustrate the Ceremoniall Law; as: no garments of linsy woolsy no ox & asse unequally yok^d^; // if they illustrate; for they might aske why might I not weare such a garment bec. god would not haue you to be a hypoc: they were babes then; // rounding the head was the Arabian fashion. this belongs to 2^d^ to. [topic?]

3-fold eating of blood; 1. Drinking blood let out of veins as Tartars; (Tartars take a knife let out blood of beasts & so drink it[1]) for now [tis] the life of the [flesh?] bec: the vitall spirits are in it this was forbid by Noah: & this is morall bec: it will embrutish a man; // 2: a prohibitiõ of blood Leuit: 17: yow shall pour out the blood & couer it w^th^ the dust this is not peculiar to vs: // but to the Jew; // bec: tis the redemption of yo^r^ soules; Leuit: 17: 10: 11: 12. 13. 14: w^e^ signif: coming of X^t^: // neither w^n^ it has life w^n^ not pour it out. 3 prohibitiõ of blood in Acts: 15: they were prohibited to eat blood only in case of offence. S^th^ Tertul: shall we be carefull to eat blood of child who dare not eat blood; // & the church observ^d^ this so long as case of offence lasted: // & so the abstinance frõ some creatures & difference in meat taught y^m^ not to haue communiõ w^th^ nations; Goe & eat; /

Reasons:

Q:

1: R: for gods souereign authority ouer mens goods & liues & lands. & we cannot dispose of them but as he will; we take them & giue them in his name; w^n^ he commands vs take y^m^ so w^n^ he commands vs leaue y^m^ we do it; // earth is the Lords & kings are the ministers of God. 2 Chron: 9: 8: blessed be the L y^t^ delight^d^ in the[e] to be king for the Lord thy god; so y^t^ a man is now king for God & must minister justice for god in his name & for his will: //

Obj.: but may not I do w^t^ I will & consent to giue away my estate; volentis non fit injuria:

A: No: I may do injure myself; as in Virginia a man in want of fowles he shall dy; on was hanged for killing his own hens;

Obj. I shall doe th:[2] accord. to generall rules those are the Lawes of Equity;

2 Reas: If the Law & woord be rule suffic: & giuen for this end to make the man of God perfectly righteous be it personall domesticall or politicall, &c.

Obj: y^r^ are generall rules.

A: w^t^ are the generall rules? if y^r^ be but only generall rules & y^r^ be not speciall means y^t^ lead to those speciall ends, we shall not be perfectly guided: & so God shew vs the means as well as the end; as

[1] These words were written in margin.
[2] by law of equity — cancelled.

giue every man his due y^r is the end & generall rule but w^t is my due; that the woord sets down as sone to the Elder brother; & if seuerall wayes to on end y^r is y^e liberty in script.

There is a diverse forme of commõ wealth; 1 bec. we have example in script: 2: bec: y^r are diversity of materials [for] gouernment: / sometime on is fit to be a monarch, let the government be as the materialls be; /

The more any Law smells of man the more unprofitable.

Arg: 3: frõ the peace of a mans consc: w^t eu^r is not of fayth is sin; a judge must jus dice[re] ex fide; &c:

Obj: I keepe generall rules of equity;

A: this equity must consta[re] ex verbo dei, y^n good but if not y^y bind ex verbo:

Arg. 4. bec: the Judicialls are not antiquated in the new [testament?]

Obj. but not established.

A: if it was a part of the misery of gentiles to be aliens frõ the commõ wealth of Israel Eph. 2: 12: then tis a part of the hap: [happiness] of Xtian nations y^t they are subject to the Lawes of that commõ wealth of Israel; — & strangers frõ the commõ wealth of Israel is not church bec. y^t is strangers frõ the promise; / i: frõ couenant of church & so frõ ciuill couenant; X^t is king of church & commõ wealth; so far as it varies frõ the commõ wealth of Israel so frõ king of the church; so far frõ the Lawes of church king of commõ wealth; X^t is head of all principalities & powers for the church; & he will subordinate all kingdoms on day to the church;

Obj: tis misery not to be borne in such a church; bec: all could not liue y^r; in that nation; // h. [hence] y^t is not the meaning;

Arg: 5. Is. 33: 22: the Lord is o^r judge & Law giuer & king, spoken of the Jewes at last conuersion: now X^t will either giue them that body of Lawes they had rec: & teach them how to vse // or a new body, but not the latter, Reuel. 22: 19. noth. [nothing] shall be added; /

M^r Sims: /

1: Those Judicialls are not foretold nor mentioned in new [testament?] to be antiquated,

2. bec. else the church of the old testament are superior to the new;

3: bec. judges must square y^r consciences.

Mr. Charles C. Smith spoke in substance as follows:

Two or three months ago the President put into my hands, for presentation to the Society, a small parcel of original let-

ters which were given to his father by the late Dr. Alfred L. Elwyn, of Philadelphia. They comprise eight letters written from Boston in 1774 by Richard Lechmere, the well-known Loyalist, to his London correspondents, Lane, Son, & Fraser; a letter from John Bernard and William Gale, dated at Boston, June 30, 1785, to the same gentlemen, with regard to debts incurred before the war; a letter from Sylvester & Henry Dering, dated Shelter Island, July 1, 1786, to the same gentlemen, of similar purport; and a letter from John Bernard, dated Boston, December 13, 1786, to John Lane. They deal largely with business transactions of little or no historical interest, and some of which are quite obscure; but in the letters of Lechmere, who was a zealous politician, there are numerous passages which show very clearly the state of feeling in Boston at the time when they were written, and which seem to be worth printing in the Proceedings.

Under date of February 14, 1774, Lechmere writes: —

"The troubles and difficulties the town is thrown into by the Tea affair has lessen'd the value of real estates exceedingly, and has prevented the sale of old Royall's house. M^r^ Elisha Hutchinson offer'd me seven hundred pounds sterling for it just as these troubles began, but his being oblig'd to abandon the town and, I believe, the country for ever put an end to our treaty, and since I have not had any offer made for it. When the spring opens I shall advertise it again, and use my best endeavours to turn it into money as soon as possible. You can form no idea of the miserable scituation the town is in, no body dare speak their sentiments for fear of being tarr'd and feather'd, or perhaps worse treated."

Six weeks later, March 28, he writes: —

"I have advertiz'd old Royall's house again,[1] but no body appears to purchase, owing, I imagine, to the shocking scituation the town is thrown into in consequence of the people's destroying the East India Company's tea, and that brought by Cap^t^ Gorham, and sundry other as extraordinary measures that they have pursued, and continue to pursue, and where they will end God knows. I think the gentlemen on

[1] It was advertised in "The Boston Evening-Post" of March 14, 1774, as "A handsome convenient Brick Dwelling House, scituate in Hanover Street, Boston, late the Estate of *Jacob Royall*, Esq; deceased, containing three Rooms upon a Floor, three upright Stories, the Cellar pav'd and ciel'd, a large Yard & Garden, an excellent Well of Water, Stable & Chaise House, with every Convenience suitable for a Gentleman. Any Person inclining to Purchase the Premisses may apply to *Richard Lechmere*."

your side the water will be cautious how you send your interest into a country where there is not the smallest degree of government. I do not think any debts here owing in Great Brittain worth more than 10/ in the pound. I should be loath to purchase upon these terms, so that you cannot wonder that this house is not sold, and that I am not able to collect your monies faster than I do. If I had no real estate in the town I should soon quit it, but I have enter'd pretty largely into the distilling bussiness, and am of course under a necessity of remaining here, and I hope with your assistance, and my own industry, with that of my worthy partner, M^r^ Timmins, I may be enabled to gett a comfortable living, and this is the utmost of my expectations under the present circumstances of affairs."

As the day approaches when the Boston Port Bill is to take effect, he becomes still more discouraged. On May 30 he writes: —

"I very much approve of your declining to open any new accounts in this country, and I fear it will be a great while before you will be able to close those already open. The scituation of this town is truly deplorable, and its future prospects really distressing to every mind susceptible of the feelings of humanity. One day more puts a stop to all imports, and a few more (which are really days of grace) puts an end to all exports, and the employment of every mechanick, a total stagnation of every kind of bussiness ensues, and nine tenths of the inhabitants render'd wretchedly miserable, and to add to our misery I do not see the least disposition among our vile Sons to take any steps to relieve our distresses; but it is with pleasure I can say that the Friends of Governm^t^ have now dared to show themselves by addressing Gov^r^ Hutchinson in a suitable manner upon his leaving the Province, as you will see by the papers, and we promise ourselves under the protection of General Gage we shall be able to speak our minds freely, and open the eyes of a deluded people, who have hitherto been deceiv'd by a sett of designing villains and bankrupts who have supported themselves at the expense of almost ruining the town and Province. If it was not for the expectations of some regiments being quarter'd in the town, I believe most people of property wou'd quit it before next winter, for hunger will break through even stone walls, and the poor tradesmen must, unless some measures are taken to get the port opened before winter, be reduc'd to a necessity of calling upon their employers and others for bread to feed their familys, as well as for cloathing and fuel. I declare I am griev'd at my heart for our approaching misery; at the same time I think we have taken infinite pains to bring it upon ourselves. There is not an individual but must be sensibly affected by it.

Among the rest I am no inconsiderable sufferer, having just gott our distill house at work,[1] and a prospect of doing our bussiness to advantage; we shall be oblig'd to put a stop to it 'till our publick affairs wear a better face, which I can but poorly afford, but willingly submitt to, in hopes that hereafter, when the people by suffering are brought to their senses, we shall enjoy a peaceable and regular government. I will not tire you with lamenting our unhappy condition, you will hear too much of it from your other friends. I will only add that you will unavoidably feel the effects of the harbour being shut up, as I apprehend no bussiness can be carried on in the town, and of course no money can be collected. I shall endeavour to improve Royall's house for a Collonell's messhouse, for I am certain it wou'd not sell for anything, and it may as well bring in something as lye empty. As M^r^ Elisha Hutchinson goes home with his father, you can treat with him about it, if he should *ever* be able to return in peace and quietness to his native countrey."

On the 1st of September he draws a still more gloomy picture: —

"I am really much concern'd for you gentlemen who have large sums of money due to you from this country; for the present there appears to be an entire stop put to our Courts of Justice. One of the Judges have been pull'd from his seat in the County of Berkshire, and the Court which meets at Worcester this day week is threatned with the same treatment. You can have no idea of the unhappy scituation of this country, and the danger the friends of government and good order are expos'd to from the licentious infatuation that has universally spread itself through this Province in particular, and generally throughout the continent. 1500 men, mostly under arms, attackd M^r^ Payne of Worcester, one of the new Council, and extorted a promise from him to resign his seat at the Board;[2] from him they went to Rutland to Coll^o^ Murray, but he being from home (at Boston) I dont find they did anything there.[3] Brigd^r^ Ruggles has been hunted, and oblig'd to

[1] Lechmere owned an undivided half of land, a brick distill-house, and other buildings on Cambridge Street, at the corner of Belknap Street, besides land and a dwelling-house on the opposite side of Cambridge Street, at the corner of Staniford Street. His estates were sold by the State under the Confiscation Acts. See Mr. Hassam's paper on Confiscated Estates of Boston Loyalists, in 2 Proceedings, vol. x. pp. 180, 181.

[2] Hon. Timothy Paine was named a Mandamus Councillor, but he was compelled to resign, and did not take the oath of office. He died in Worcester July 17, 1793. See Sabine's American Loyalists, vol. ii. p. 143.

[3] Col. John Murray was named a Mandamus Councillor, but did not take the oath of office. On the evacuation of Boston he went to Halifax with the British army, and died at or near St. John in 1794. See Sabine's American Loyalists, vol. ii. pp. 115, 116.

take asylum here allso;[1] and several others have been oblig'd to do the same. Coll° Leonard of Taunton had six balls and some shot fir'd into his house.[2] Sunday night was a week, there was a vast number surrounded his house, but by having a few hours notice he had time to come to town. They have compelld several others to resign, and we fear this matter, together with their continually calling town meetings through the Province, without paying any regard to the Act of Parliament, will finally produce some fatal consequences. I am truly sorry that the Act is so very imperfect, it is very easily evaded in several parts of it, but one capital mistake, or rather neglect, they have not annext any penalty for the breach of any part of it, so that upon the whole our Gov^r^ is exceedingly embarrass'd and knows not how to conduct in the matter, and withal, we have not half sufficient troops to carry into execution any great plan. Where these things will finally end God knows, but it is the fears of every good man that much blood will be spilt before the country will be reduc'd to a proper sense of subordination, and restor'd to its former state of good order. This is a sad alternative, but it appears to me nothing short of it will ever reduce my deluded countrymen to their senses. If government do not pursue what they have undertaken, they must give over all thoughts of any authority over the collonies, and leave them to do as they think proper for the time to come, but I will not tire you upon a subject that must give you pain, and that I suppose almost every one of your correspondents write you upon."

Before the end of the month he has apparently made up his mind that he may be obliged to seek a new home in England. He writes, September 28: —

"Some time ago Cap^t^ Mitchel left with me about 4000 feet plank, board measure, which I sold to the contractor for building barracks, who sent a cart to the wharfe for them. They got one load into the street, and the populace pull'd them out of the cart, and left them in the street 'till towards evening when a party of soldiers were sent to take them up, which was done without any interruption, but in the night all the rest of the plank were split in peices, and thrown into the water and lost. This was the first instance of attempting to oppose the building the fortification at the Neck and barracks for the troops. They have since done every thing in their power to oppose and obstruct every measure

[1] Gen. Timothy Ruggles, of Hardwick, took the oath as a Mandamus Councillor, and on the evacuation of Boston went to Halifax. He died in Nova Scotia Aug. 4, 1795. See Paige's History of Hardwick, pp. 59-81; Sabine's American Loyalists, vol. ii. pp. 242-246.

[2] Daniel Leonard, of Taunton, author of "Massachusettensis," was appointed a Mandamus Councillor, but did not take office. He went to Halifax with the British army, and was afterward Chief Justice of the Bermudas. He died in London June 27, 1829. See Sabine's American Loyalists, vol. ii. pp. 10-12.

of governm[t] for the safety, as well as convenience of the troops, and finally have prevented the tradesmen from working for them, so that the barracks that were begun now stand still. I have let them have my distill house, which was fitting for them, and in good forwardness for their reception, and will contain one regiment. By this step, selling the plank to them, accepting the office of a Councillor, my connection with the navy and army, together with my being an Addresser, Protestor against the Committee of Correspondence, and a variety of other incidents, has render'd me one of the most obnoxious of all the friends of government. This scituation, you must be sensible, is not the most desirable, especially to a person who very lately was, I may venture to say, as much esteem'd by the people as almost any private gentleman in town. I am, however, determin'd to pursue and do my duty, both in my publick and private capacity, without regarding the threats and menaces that are continually throwing out, and finally when these matters are terminated, if I find I cannot sit down quietly and enjoy uninterruptedly the liberty of acting and thinking for myself, without being subjected to insults and abuses, I must be oblig'd to take refuge in a country where a man is sure of protection and freedom; to this end therefore in the mean time, let me ask the favor of you, my friends, to be thinking for me against this evil day (which I fear will come) by laying some plan for me, whereby I may make an addition of three or four hundred pounds sterling a year, either by some office or bussiness in or near London, such an addition, with what income I have, wou'd most certainly determine me to quit this distracted country with all my family. Perhaps you will think I am not in earnest, and that this request is the effect either of fear or sudden resentment. It is neither, I do assure you, but 'tis the result of mature deliberation, for I am apprehensive, and indeed morally certain, however successfull government may be in their intended plans of opperation, it is impossible that the friends of government can ever be restor'd to the good opinion and confidence of the people, nor do I think they will be in safety at any time hereafter, if the troops should be withdrawn. You can have no conception with what rancour and virulence they express themselves towards them, and nothing but fear has prevented their destroying every one of them long ago. They have gone so farr as to prohibit any person's supplying the government with materials for the King's service. They have burnt several loads straw at Roxbury, as they were coming in for the troops, and for a day stopp'd the butcher from bringing in beef and other provissions for them, but this last circumstance they soon found wou'd not do, for by this step they wou'd starve six or eight of their own party to one of the other, and that the General wou'd take possession of all the provissions and grain in the town. They really act like distracted men more than reasonable beings, and seem at

their wit's end, what will become of them when a sufficient number of troops can be got here. By some parts of their conduct one wou'd imagine they were endeavour[s] to bring things to extremities before a reinforcement can arrive, but are afraid to make the first attack, and by every act of insolence and impudence they seem to be contriving to provoke the General and troops to commence hostilities, but they, with that calmness and prudence that does them honor, carefully avoid, and put up with many insults and abuses 'till they may be sure of success, both in the town and in the country. When the Scarborough man of warr arrives,[1] the Ministry will receive so different accounts of the conduct, temper, and disposition of the people of this country from that given by our humane and good Gov[r] Hutchinson that I fear it will do him a great injury, and finally sink his reputation with the King and his Ministers; for it will be too fully prov'd, that the people of this country are not such quiet, peaceable and orderly beings as he has represented them, but merit the very reverse character. It wou'd really be very hard that he should suffer in his character, and the opinion of his master, from the real goodness of his heart and love of his native country, which I make no doubt induc'd him to make the most favourable representations and the best excuses he cou'd for their ungratefull conduct. I most sincerely wish he may be hansomely provided for, but 'tis impossible for him to entertain any thoughts of resuming this government. Thus, dear Sirs, I have from time to time been insensibly led into a subject that requires more time and more knowledge than I have, to claim your attention, but I cou'd not avoid expressing myself thus farr upon it, for I feel myself very deeply interested in it. The prospect is dismal, view it how you will, and the event, I fear, will be fatal to this wicked and deluded people, who promise themselves great things from the Congress now sitting at Philadelphia, whose measures, I hope, will be prudent and pacifick, but the reverse is fear'd, as most of them are lawyers and violent opposers to government."

I need only add to what the letters themselves tell, that when the British evacuated Boston, Lechmere went to Halifax, with his family of eleven persons, and afterward to England, where he died in 1814, at the age of eighty-seven.

Remarks were also made during the meeting by Messrs. Winslow Warren, Samuel A. Green, Henry W. Haynes, the President, and other members.

[1] The Scarborough man-of-war arrived at Boston August 6, 1774, and sailed on her return to England September 4. Lechmere's letter of September 1 was sent by her.